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C O N F I D E N T I A L SECTION 01 OF 03 YEREVAN 000226

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DEPARTMENT FOR EUR/CARC, NSC FOR MARIA GERMANO

E.O. 12958: DECL: 03/12/2018  
TAGS: [PGOV](#) [PHUM](#) [PREL](#) [KJUS](#) [KDEM](#) [AM](#)  
SUBJECT: ARMENIA'S CONSTITUTIONAL COURT UPHOLDS  
PRESIDENTIAL ELECTION RESULT

REF: YEREVAN 199

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Classified By: CDA JOSEPH PENNINGTON. REASON 1.4 (B/D)

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SUMMARY  
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¶1. (SBU) In a March 8 decision, Armenia's Constitutional Court found that while there were irregularities in the conduct of the February 19 presidential election, they were not sufficient to alter the outcome of the vote won by Prime Minister Serzh Serzh Sargsian. The plaintiffs in the court case, presidential candidates Levon Ter-Petrosian (LTP) and Tigran Karapetyan, had cited multiple violations of election administration as grounds for annulling the certification of the election result by Armenia's Central Electoral Commission. Due to the virtual media blackout imposed by President Kocharian's March 1 emergency decree, it is difficult to ascertain public opinion on the court decision. But anecdotal evidence suggests widespread disappointment in the ruling which, while not unexpected, only serves to reinforce public skepticism about the independence of Armenia's judiciary. END SUMMARY.

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BACKGROUND  
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¶2. (SBU) Two presidential candidates -- ex-president Levon Ter-Petrosian (LTP) and People Party leader Tigran Karapetian -- appealed to Armenia's Constitutional Court to annul the February 24 decision by the Central Election Commission to certify Armenia's February 19 presidential election result. (NOTE: While the party of third-place finisher Artur Baghdassarian complained of serious problems with the election, and reportedly thoroughly documented abuses, the party chose not to become a plaintiff in the case. This likely had to do with Baghdassarian unexpectedly accepting the PM's offer to join a new coalition government on February 29. END NOTE.) Karapetian's argument was fully based on the February 20 OSCE/ODIHR preliminary report, and no further evidence was put forth on his behalf.

¶3. (SBU) Legal representatives of the candidates, mainly those representing LTP, contested that widespread violations, including vote fraud, intimidation and violence, and adulteration of election protocols were sufficient to alter the outcome that saw Prime Minister Serzh Sargsian win 52.8 percent of the vote and avoid a second round. Counsel for

the plaintiffs specifically argued that the violations were made with the assistance of state authorities. Mission staff with legal backgrounds who attended some or all of the deliberations observed that the plaintiffs presented strong evidence to overturn the CEC certification, while respondents (CEC representatives) appeared unprepared and unpersuasive in their rebuttals, to the extent that some answers elicited rolling of the eyes of the court's eight justices present.

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PLAINTIFFS' CASES  
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¶4. (U) The main charges in the plaintiffs' cases follow. To support their arguments, the plaintiffs submitted appeals, complaints, protocols on election results, court decisions, monitoring reports, and audio and video recordings.

¶A. VOTE FRAUD

- About 80,000 voters' names were included in voter lists (VL) with the day and month of birth recorded as "00.00." This, according to representatives of the plaintiffs, was done intentionally, in order to keep track of those who were out of the country or dead;
- Thousands of voters were included in the main and additional VLs and voted multiple times;

¶B. CAMPAIGN VIOLATIONS

- Voters were prevented from participating in LTP rallies and forced to participate at PM Sargsian's rallies;
- Campaign fund of PM Sargsian received money from enterprises in which the state is a shareholder and others with more than 30 percent held by foreign interests (such as

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ArmRozGazProm). Expenditures from the campaign fund exceed the limits envisaged by law;

- Before and during the official campaign, President Kocharian campaigned for PM Sargsian and against LTP;
- PM Sargsian continued to act as PM in violation of Armenian law during the campaign;
- PM task force provided numerous services to voters on behalf of the candidate (essentially buying votes through patronage);
- Media coverage was extremely biased in favor of PM Sargsian and against LTP and other opposition candidates;

¶C. VIOLATIONS OF ELECTION ADMINISTRATION

- Appeals and complaints to the CEC and Administrative courts were formal and closed to the media. The CEC did not consider over 60 appeals submitted to them, and made its decision on the results without having examined the appeals.
- Opposition candidates' proxies had submitted appeals to invalidate the results of 167 Provincial Election Commissions (PECs); those appeals were ignored or the decisions to refuse them were conducted without the presence of opposition proxies.

¶D. OTHER

- Armenian citizens abroad were disenfranchised, since no polling was conducted abroad.

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CEC'S RESPONSE  
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15. (U) Respondents addressed the plaintiffs' accusations with the following arguments:

- The Election Code (EC) does not provide for out-of-country voting, hence there was no violation of law in that regard;
- Activities of individuals and parties prior to the official campaign period are not regulated by the EC, even if they bear features of campaigning;
- The complaints related to prevention of voters from participating at LTP rallies were readdressed to the Prosecutor's office, since the CEC is not an investigatory body;
- The PM's fulfillment of his duties (through the task force) required by his post should not be considered as rendering services to voters.
- As for the DOB "00.00," when the GOAM issued passports to citizens based on birth certificates where only the year of birth was indicated, it was decided to indicate "00.00" for the date and month of birth. 73,730 citizens have such DOB data.
- Allotments of enterprises that had no right to allot money to a campaign fund are already transferred to the state budget.

- 135 PECs were recounted, 62 of them based on appeals by LTP's proxies, 11 based on appeals of Tigran Karapetyan. Only one recount showed significant distortion of results, which resulted in launching a criminal case. 24 PECs were not recounted due to lack of time. (Note: There was no limit on the number of hours officials could work during the recount period, but we know of no instance when officials extended their working hours in order to complete their workload. End Note). LTP had 5052 proxies registered and only 6.3% of those submitted appeals or complaints.

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VERDICT  
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16. (SBU) Not unexpectedly (reftel), the court's verdict was to leave the CEC certification of election results in place. In its finding, the court stressed that the applicants did not appeal first to the Administrative Court despite their lack of confidence in it, and hence failed to exhaust their

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remedies. The OSCE/ODIHR report, stressed in Karapetian's arguments to the court, was found to lack evidentiary nature. The court further ruled that the report should be considered holistically, since it stated that the election was conducted "mostly in line" with international standards. Of over 500 documents filed by LTP's attorneys, only 94 were found to have evidentiary value for the case at hand.

17. (SBU) Regarding the requests for such recounts which were denied as "baseless," no judicial or administrative check has yet been brought to bear on them. The court found no qualitative difference in the disparity between PEC and CEC protocols that would have influenced the final results. However, the court referred an undisclosed number of election violations claims that seemed credible to the Prosecutor-General's office for further investigation. Transcripts of the case are not available.

18. (U) In responding to claims of media bias, the Court also found that the National Commission on Television and Radio was not fulfilling its responsibilities and had adopted a "formalistic" approach. But this violation was insufficient to compromise free speech, and the court found that presidential candidates were able to have their voices reach

voters.

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PUBLIC REACTION: SKEPTICISM OF JUDICIAL INDEPENDENCE  
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¶9. (C) It is difficult to determine genuine public reaction to the verdict, given the stringent media restrictions imposed by the March 1 state of emergency slated to expire March 20. Anecdotal evidence suggests, however, that average citizens in the street did not expect a different result. A number of local merchants whom Poloff spoke with after the verdict on March 9 dismissed the ruling out of hand, alleging it had been cooked in advance. A political observer also told Poloff on March 11 that unfortunately "this is how things work" in Armenia. Other acquaintances expressed incredulity that the Embassy could even fathom an alternative outcome.

¶10. (C) A member of the ODIHR Election Observation Mission who attended the hearings observed to PolChief that the demeanor of the Constitutional Court judges appeared to change over the course of the four-day hearings. While at the outset they appeared active and engaged, and asked probing, thoughtful questions, by Friday and Saturday (when summations were given and the ruling issued), interactions had become perfunctory and subdued. Body language was transformed. The observer's perception, and that of the observer's staff, was that someone had "gotten to" the justices prior to the deliberations. This seems consistent with the account provided by one of the Constitutional Court justices (reftel) that President Kocharian had been pressuring the justices to ratify the CEC results.

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COMMENT  
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¶11. (C) While unsurprising, the decision of the Constitutional Court provides an official -- though tainted -- imprimatur to the disputed election result. It certainly will not change those voters' minds who believe the vote was stolen, or reassure Armenian citizens about the independence of even their highest court. But it does constitute, at least for now, the last legal recourse which was available to LTP to contest the result. As long as the state of emergency remains in effect, the post-election crackdown on LTP supporters continues, and preparations for a transfer of power on April 9 take place, it remains to be seen what cards LTP can play. END COMMENT.  
PENNINGTON